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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
MARK L. EDWARDS, JR.,  
Defendant and Appellant.

No. A156079  
(Contra Costa County Super.  
Ct. No. 5-071133-3)

Defendant Mark L. Edwards appeals from the Contra Costa County Superior Court's denial of his petition for resentencing. His counsel requests that this court independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Defendant was informed of his right to file a supplemental brief and has not done so. Upon our independent review of the record pursuant to *Wende*, we conclude there are no arguable appellate issues requiring further briefing and affirm the judgment.

**BACKGROUND**

In 2007, the Contra Costa District Attorney filed an information charging Edwards with evading a police officer causing serious bodily injury (Veh. Code, § 2800.3) and driving under the influence causing injury (*id.*, § 23153, subd. (a)), both felonies. The district attorney further alleged regarding the driving under the influence count that Edwards personally inflicted great bodily injuries to two different individuals (Pen. Code, § 12022.7, subd. (a)<sup>1</sup>) and had been convicted within the preceding 10 years of violating

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise stated.

Vehicle Code section 23153, subdivision (a).<sup>2</sup> The information included several other enhancement allegations (§ 667, subd. (a)(1).)

The sparse record does not contain a verdict. It indicates, however, that in December 2007, after a jury trial, Edwards was sentenced to a total of 17 years in state prison for his convictions on both counts and for enhancement allegations found to be true.

In 2018 apparently, Edwards filed a petition for resentencing in Contra Costa Superior Court.<sup>3</sup> In November 2018, the superior court issued a written decision denying this petition. The court indicated Edwards had been sentenced a decade before he filed his petition and currently was incarcerated. The court further wrote that Edwards sought resentencing under sections 1170.18, 1170.126 and 1385 and explained why he was not entitled to it. Regarding Edwards’s request for resentencing under section 1170.18, the court wrote that as of November 15, 2014, “ ‘Proposition 47 makes certain drug- and theft related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers . . . .’ ([*People v. Rivera* (2015) 233 Cal.App.4th 1085,] 1091.) ‘Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person “currently serving” a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (§ 1170.18 (a)[’], (f).) [*Id.* at p. 1092.]

“Mr. Edward’s conviction for evading a police officer (Veh. Code, § 2800.3) does not qualify for resentencing as a misdemeanor. Proposition 47 only reduces certain possessory drug offenses and thefts of property valued under \$950 to straight

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<sup>2</sup> Originally, count one also included great bodily injury enhancement allegations, but these were later stricken.

<sup>3</sup> Edwards’s petition is not in the record. The Clerk of the Contra Costa Superior Court has filed a due diligence declaration stating the court could not locate it.

misdemeanors. [Citations.] The crime of evading a police officer causing serious bodily injury (Veh. Code, § 2800.3) is not a qualified felony and Mr. Edward’s [sic] is not eligible to apply to the court for reclassification of the crime as a misdemeanor. Accordingly, he is not entitled to resentencing under [section] 1170.18.”

Regarding Edwards’s resentencing request under section 1170.126, the court wrote, “Following passage of Proposition 36 by the voters in November 2012, so-called three strike state prisoners with a non-serious and non-violent third strike (as defined by Penal Code [sections] 667.5[, subdivision] (c) or 1192.7[, subdivision] (c)) and who are serving an indeterminate term, may petition for resentencing as a two strike offender under [Penal] Code [section] 1170.126[, subdivision] (a). [Citation.] [¶] Mr. Edward’s [sic], however, is not qualified for such relief. He is a second strike inmate who is serving a determinate term of 17 years on the basis that he inflicted serious bodily injury in the commission of his current felony, which constituted a violent felony and had a prior conviction for robbery, another violent felony. Therefore, he has not met the initial threshold requirement for relief under Penal Code [section] 1170.126[, subdivision] (a).”

Regarding Edwards’s request for resentencing under section 1385, the court wrote, “Edward[s] requests the court exercise its discretion presumably to either dismiss or strike his conviction for evading a police officer causing serious bodily injury (Veh. Code, § 2800.3). The court has no jurisdiction to provide such relief and in any event, defendant has failed to state facts or legal grounds to warrant such relief.”

Edwards subsequently filed a timely notice of appeal regarding his “Petition for Resentencing P.C. Sect. 1170.18 And P.C. Sect. 1385.”

## **DISCUSSION**

We have independently reviewed the record under *Wende* and have not found any arguable appellate issues. The court correctly concluded that none of the statutes Edwards relied on in his petition afforded him relief.<sup>4</sup>

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<sup>4</sup> Although the record does not contain Edwards’ petition, his notice of appeal states the petition was based on two of the three statutes the court analyzed—sections 1170.18 and 1385—and does not mention the third statute, section 1170.126.

Regardless, sections 1170.18 and 1170.126 allow for resentencing for certain non-violent offenses only. Section 1170.18, enacted via Proposition 47, “was intended to ensure prison spending is focused on violent and serious offenders, to maximize alternatives for nonserious, nonviolent crimes, and to invest the savings generated thereby into educational, social, and mental health causes. [Citation.] To this end, Proposition 47 reduced most possessory drug offenses and thefts of property valued at \$950 or less to straight misdemeanors.” (*People v. Brown* (2017) 7 Cal.App.5th 1214, 1217.) Section 1170.126, enacted via Proposition 36, does not extend its ameliorative provisions to violent offenders either. (See *People v. Estrada* (2017) 3 Cal.5th 661, 670–671 [discussion indicating Proposition 36 does not apply to violent offenders].) Edwards’s convictions were for violent crimes and, therefore, he is not eligible for resentencing under sections 1170.18 or 1170.126.

Section 1385, the third statute Edwards relied on in his petition, provides that a court may in the furtherance of justice order an action dismissed and may also order that an enhancement or its punishment be stricken. (§1385, subds. (a), (b).) The superior court correctly concluded it had no jurisdiction to change Edwards’s sentence under section 1385, as the relevant judgment appears to have become final about a decade before he filed his resentencing petition. (*People v. Chavez* (2018) 4 Cal.5th 771, 777 [“a court may exercise its dismissal power under section 1385 at any time before judgment is pronounced—but not after judgment is final”]; *People v. Espinoza* (2014) 232 Cal.App.4th Supp. 1, 8 [“trial court simply did not have jurisdiction to act under section 1385” where “cases were final more than 10 years ago and there is nothing—no ongoing action or pending proceedings—which makes [defendant’s] cases subject to section 1385 relief”].)

### **DISPOSITION**

We have conducted an independent review of the record under *Wende* and conclude there are no arguable appellate issues requiring further briefing. The judgment is affirmed.

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STEWART, J.

We concur.

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KLINE, P.J.

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RICHMAN, J.

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